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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Mesut Gunduc

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EXAMINER

SHERR, CRISTINA O

ART UNIT

PAPER NUMBER

3685

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OFFICEACTIONS@FDML.COM

Office Action Summary	Application No. 10/693,137	Applicant(s) GUNDUC ET AL.	
	Examiner CRISTINA SHERR	Art Unit 3685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-9,12,13,16-20 and 31-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9,12,13,16-20 and 31-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to Applicant's Amendment filed June 28, 2010. Claims 1, 2, 5, 9, 12, 13, 16, and 20 are currently amended. Claims 29-30 are currently canceled. Claims 31-37 are newly added. Accordingly, claims 1, 2, 5-9, 12, 13, 16-20, and 31-37 are currently pending in this case.

Response to Arguments

2. Applicant's arguments, see Remarks, filed June 28, 2010, with respect to the 101 rejection of claims 12, 13, and 16-20, as currently amended, have been fully considered and are persuasive.

3. The 101 rejection of claims 12, 13, and 16-20, as currently amended, has been withdrawn.

4. Applicant's arguments with respect to the section 112 rejections of claims 1, 2, and 5-9, as currently amended, have been considered but are moot in view of the new ground(s) of rejection.

5. Applicant's arguments filed June 28, 2010 have been fully considered but they are not persuasive.

6. Applicant argues, regarding claim 1, as currently amended, that nothing in the cited references teaches, discloses or suggests a plurality of plugins that are plugged into the resource interface to provide a set of application- specific callbacks from the software cluster server to the set of resources, which application-specific callbacks facilitate communication of the requests from the application to the set of resources, wherein the resource interface accepts additional plugins that are plugged into the

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resource interface to provide application-specific callbacks from the software cluster servers to other resource types.

7. Examiner respectfully disagrees. Note firstly that the limitation beginning “wherein the resource . . .” constitutes intended use and thus does not serve to further limit the claim from the prior art. MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (1987). Note also that Kampe discloses a plurality of plugins that are plugged into the resource interface to provide a set of application- specific callbacks from the software cluster server to the set of resources at, e.g. col 7 ln 20-21, wherein the system includes a plugin for each resource type corresponding to the different application server (col 7 ln 19-20), and wherein each plugin implements a resource API to encapsulate the plugin's particular resource type-specific behavior (col 7 ln 30).

8. Applicant argues, regarding claim 1, as currently amended, that nothing in the cited references teaches, discloses or suggests wherein each computer in the cluster communicates the set of resources available on said computer to the group leader, and wherein when the requests from the application are received, the group leader determines the availability of the set of resources on each one of the one or more computers by referencing the cluster configuration file, and directs the request to the computer having the requested resources.

9. Examiner respectfully disagrees. Note that the limitation beginning “wherein each computer . . . operating thereon” constitutes intended use and thus does not serve to further limit the claim from the prior art. MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (1987).

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10. Applicant argues, regarding claim 12, as currently amended, that similar arguments apply.

11. Examiner respectfully disagrees. Note that to be entitled to patentable weight in method claims, the recited structural limitations therein must affect the method in a manipulative sense and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer*, 135 USPQ 31 (BdPatApp&Int 1961). In this case, the newly-added language in claim 12, “. . . wherein each computer . . . one or more computers”, amounts to the mere claiming of a use of a particular structure, and thus does not serve to further distinguish the claim from the prior art.

12. Note also that a wherein clause that merely states the result of the limitations in the claim adds nothing to the patentability or substance of the claim. *Texas Instruments Inc. v. International Trade Commission* 26, USPQ2d 1010 (Fed. Cir. 1993); *Griffin v. Bertina*, 62 USPQ2d 1431 (Fed. Cir. 2002); *Amazon.com Inc. v. Barnesandnoble.com Inc.*, 57 USPQ2d 1747 (CAFC 2001). In this case, the newly-added language, “wherein each computer . . . operating thereon” merely states the result of the limitations in the claim and therefore adds nothing to the patentability or substance of the claim.

Remarks

13. Regarding claims 1, 12, and 31, note that language that suggest or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. MPEP §2106 II C.

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14. In this case, the recitations beginning “when the requests . . .” constitute optional language and therefore do not further distinguish the claims from the prior art.

15. Note also that recitations beginning “that allows . . .” constitute optional language and therefore do not further distinguish the claims from the prior art.

Claim Rejections - 35 USC § 112

16. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

17. Claims 1, 2, 5-9, 34, and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

18. An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed. *In re Zletz*, 13 USPQ2d 1320 (Fed. Cir. 1989). Also, during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. *Id.*

19. In this case, claim 1 recites a “software cluster server” which is most likely a machine or apparatus. However, the various interfaces and plugins in claim 1 under the broadest reasonable interpretation of the claim are likely software. Thus it is unclear whether claim 1 is hardware or software or some combination thereof.

20. Also, it has been held that a claim that recites both an apparatus and a method for using said apparatus is indefinite under section 112, paragraph 2, as such a claim is

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not sufficiently precise to provide competitors with an accurate determination of the 'metes and bounds' of protection involved.

21. In this case, claim 1 recites "wherein each computer . . . determines . . . and directs . . .", thus reciting both an apparatus and steps for its use.

22. For these reasons, independent claim 1 and its dependent claims 2, 5-9, 34, and 36 are rejected under 35 U.S.C. 112, second paragraph.

Claim Rejections - 35 USC § 102

23. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

24. Claims 1, 2, 5-9, 12, 13, 16-20, and 31-37 are rejected under 35 U.S.C. 102(a) as being anticipated by Kampe et al (US 6,854,069).

25. Regarding claims 1, 12 and 31 –

26. Kampe teaches a system and method for high availability clustering of a group of computer nodes (abs, col 2 ln 20-30), comprising:

one or more computers interconnected to create a cluster network (col 2 ln 55-57), each computer including a software cluster server (col 2 ln 55-57), a cluster database (col 15 ln 8-20), and a set of resources of multiple resource types (col 7 ln 16-17), including software application servers, wherein each software cluster server operating at one of the one or more of the computers provides an application access to

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the set of resources on said computer, or at another one of the one or more computers interconnected to the cluster network; (col 5 ln 55-60)

a resource interface provided by said software cluster server that provides an abstraction layer (col 7 ln 45-50) that allows the software cluster server to receive requests from the application and communicate the requests to said set of resources; (col 9 ln 55-60) a plurality of plugins that are plugged into the resource interface to provide a set of application-specific callbacks from the software cluster server to the set of resources, which application-specific callbacks facilitate communication of the requests from the application to the set of resources, (col 7 ln 20-21) wherein the resource interface accepts additional plugins that are plugged into the resource interface to provide application-specific callbacks from the software cluster servers to other resource types (col 7 ln 20-25, col 9 ln 50-60, col 10 ln 30-40).

27. Note that the limitation beginning “wherein each computer . . . operating thereon” constitutes intended use and thus does not serve to further limit the claim from the prior art. MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (1987).

28. Regarding claim 2 and 13 –

29. Kampe discloses wherein each of said software cluster servers includes a heartbeat interface that provides heartbeat information to other software cluster servers at said other application servers. (col 9 ln 19-20).

30. Regarding claims 5 and 16 –

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31. Kampe discloses wherein the system includes a cluster administration utility for accessing and administering the software cluster server using remote method invocation calls. (col 23 ln 2, col 20 ln 20).

32. Regarding claims 6 and 17 –

33. Kampe discloses wherein each resource has a resource type associated with it. (col 7 ln 15-16)

34. Regarding claims 7 and 18 –

35. Kampe discloses wherein resources are the object instances of their respective resource types. (col 7 ln 25-30).

36. Regarding claim 8 and 19 –

37. Kampe discloses wherein a resource is any of a computer, internet protocol address, disk, database, or file system or application. (col 6 ln 35-40).

38. Regarding claim 9 and 20 –

39. Kampe discloses wherein the software cluster server defines resource groups that include clusters of resources. (col 13 ln 20-30).

40. Regarding claim 31 –

41. Kampe discloses a computer-readable storage medium carrying one or more sequences of instructions, which instructions, when executed by one or more processors, cause the one or more processors to carry out the steps of:

allowing an application to access, via a software cluster server, a set of resources of various resource types, located on one or more computers interconnected to create a cluster network, (col 2 ln 55-57, col 7 ln 16-17),

wherein each computer includes a software cluster server, a cluster database, and the set of resources of multiple resource types, including software application servers; (col 15 ln 8-20, col 2 ln 55-57),

providing a resource interface at said software cluster server that provides an abstraction layer (col 7 ln 45-50) that allows the software cluster server to receive requests from the application and communicate the requests(col 9 ln 55-60) to said set of resources via a plurality of plugins that are plugged into the resource interface; (col 7 ln 20-25, col 9 ln 50-60, col 10 ln 30-40).

wherein the plurality of plugins are plugged into the resource interface to provide a set of application-specific callbacks from the software cluster server to the set of resources, which application-specific callbacks facilitate communication of the requests from the application to the set of resources, wherein the resource interface accepts additional plugins that are plugged into the resource interface to provide application-specific callbacks from the software cluster servers to other resource types; (col 7 ln 20-21)

42. Note that Note that the limitation beginning “wherein one of the one or more . . . or more computers” constitutes intended use and thus does not serve to further limit the claim from the prior art. MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (1987).

43. Note that the limitation beginning “wherein each computer . . . operating thereon” constitutes intended use and thus does not serve to further limit the claim from the prior art. MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (1987).

44. Regarding claim 32 –

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45. Kampe discloses wherein the resource interface provides an interface between the software cluster server and a database, and wherein the resource interface accepts additional plugins that are plugged into the resource interface to provide application-specific callbacks from the software cluster servers to other resource types. (col 7 In 20-25, col 9 In 50-60, col 10 In 30-40).

46. Regarding claims 33, 36 and 37 –

47. Kampe discloses providing a plugin for each resource type corresponding to a different application server, (col 7 In 19-20) and wherein each plugin implements a resource API to encapsulate the plugin's particular resource type-specific behavior, (col 7 In 30) and to isolate the software cluster server from said behavior while providing access to each application server's set of resources. (col 7 In 60-61)

48. Regarding claims 34 and 35–

49. Kampe discloses wherein the resource interface provides an interface between the software cluster server and a database, and wherein the resource interface accepts additional plugins that are plugged into the resource interface to provide application-specific callbacks from the software cluster servers to other resource types. (col 7 In 20-25, col 9 In 50-60, col 10 In 30-40).

Conclusion

50. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

51. Jardine et al (US 5,884,018) disclose a method and apparatus for distributed agreement on processor membership in a multi-processor system.

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52. Fakhouri et al (US 7,464,147) disclose cluster management of resource groups.

53. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

54. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

55. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRISTINA SHERR whose telephone number is (571)272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

56. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin L. Hewitt, II can be reached on (571)272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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57. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CRISTINA OWEN SHERR
Examiner
Art Unit 3685

/Calvin L Hewitt II/
Supervisory Patent Examiner, Art Unit 3685